WISCONSIN INFO PACKET: PRISONERS CONVICTED OF CERTAIN OFFENSES

From: Derek W. Logue of OnceFallen.com, 2211 CR 400, Tobias NE 68453

Below is an informational packet containing common info requested by prisoners in the WIDOC convicted specifically for sexual offenses. The most frequently requested information include housing leads, a summary of the state law, rules for supervision, lifetime GPS, polygraphs, and info on civil commitment. Last Update: 01/30/2022

WISCONSIN HOUSING

Housing leads are extremely scarce. Below is my only current lead and is only useful for Milwaukee registrants:

Conklin Real Estate LLC
819 N 23rd Street, Milwaukee, WI 53233
Phone: (414)-342-1550 or Cell: (414)-791-5315 or Fax: (414)-342-1560
bob@conklinrealestate.com
Details: This is a company with properties all over the city, and some properties available are open to RCs.

In *Hoffman, et al. v. Village of Pleasant Prairie*, Case No. 16-CV 697-JPS (E.D. Wis., 4/17/2017), the Court held that a village ordinance regulating the residency of those convicted of sexual offenses involving children within the Village's borders, which was enacted to keep offenders out of the Village and made more than 90% of the Village off-limits to offenders, with the remaining 10% largely nonresidential and not including most low-income housing, and which banished offenders from the Village and without justification differentiated between offenders who were or were not living in the Village at the time of their most recent offense was unconstitutional under ex post facto ground. Still, WI currently still has a 1500 foot residency restriction for those consider SVPs while on supervision, and recent efforts to repeal the law were vetoed by Tony Evers.

WISCONSIN LAW SUMMARY

Comment: Wisconsin is a legal battleground for municipal residency restriction laws. Some WI communities had scaled back local residency restriction laws in response to *Hoffman, et al. v. Village of Pleasant Prairie,* Case No. 16-CV 697-JPS (E.D. Wis., 4/17/2017), which ruled the ordinance violated ex post facto and equal protection clauses. (The Pleasant Prairie ordinance had made 90% of the town off-limits and most of the remaining land was non-residential property.) *Koch v. Village of Hartland*, No. 22-1007 (7th Cir. 2022) overturned prior rulings in *US v. Leach*, 639 F.3d 769 (7th Cir. 2011) & *Vasquez v. Foxx*, 895 F.3d 515 (7th Cir. 2018), concluded that the critical inquiry in assessing retroactivity is "whether the law changes the legal consequences of acts completed before its effective date." The courts declared the Hartland ordinance was retroactive, and remanded the case back to the US District Court to determine if the law is punitive. Lifetime GPS in WI was upheld In *Braam v. Carr*, No. 20-1059 (7th Cir. 2022); in applying the 4th Amendment's reasonableness standard, the Court determined the government's interest in deterring recidivism by dangerous offenders outweighs the offenders' diminished expectation of privacy. Registrants cannot photograph, film, or videotape a minor without parental written consent (WS §948.14). Registrants are not allowed to change their legal names (WS §301.47).

- Date Registry Established: 12/25/1993
- Registry Retroactive? No
- Qualifying event: Conviction/Adjudication/Commitment, or was incarcerated when law passed.

- Online since: 6/1/2001
- Statutes: Wis. Stat. §301.45 through §301.49
- Substantially AWA Compliant: No
- Lists all RPs on Internet website? Yes
- Where to register: Local police (County Sheriff if in unincorporated area)
- When to register: 10 days for initial registration after entering state, and for updates. Employment defined as a period exceeding 14 days or 30 days in a calendar year. WS §301.45(3). WI SOR FAQ page states that homeless RPs must register every 7 days, even if on GPS; RPs must provide itinerary for temporary stays; FAQ page also defers to federal law requiring 21-days advance notice for international travel.
- Frequency/Length of registration: In-state Registrants are on a two-Tier system.
  - Regular Offenders: Verify annually for 15 years (time on registry starts after parole/supervision period ends, even though registration is required while on paper)
  - SVPs: Quarterly for life.
  - Some lifetime Registrants after 1/1/2008 may be subject to lifetime EM (See WS §301.48)
- Out-of-State Convictions: Registration required for any extra-jurisdictional offense "comparable to a sex offense" in WI. (WS § 301.45(1d)). State registry FAQ notes this also applies to offenses requiring registration in jurisdiction of conviction. Length of registration can be 20 years, 15 years, or life; see WS §301.45(5m) for details (law is too long and complex to explain here)
- Registry fees: $100/yr. (WS §301.45(10)); WI Admin. Code DOC §332.19 implies the fees are civil in nature, but can lead to a revocation or alteration of time on supervised release
- Community Notification: There are three levels of notification assigned by risk –
  - Level 1: Notification about the offender is disseminated to law enforcement only.
  - Level 2: Notification about the offender is provided to specific individuals and groups, based on the particular facts in the case.
  - Level 3: Notification is community wide notification where upon information is disseminated through media and community meetings.
- Residence Restrictions:
  - No statewide restriction; however, many municipalities have imposed restrictions of up to 2000 feet. As of 2017, over 150 municipalities have passed some form of residency restriction.
  - Those On Paper cannot establish a residence until registering beforehand.
  - Supervision: Those On Paper can be banned from residing in certain locations by courts. Those On Paper classified as SVPs cannot be placed within 1500 feet of school premises, child care facility, public park, place of worship, or youth center, nursing homes/assisted living centers, and next door to a child's residence; must be released only in the county of conviction.
- Anti-Clustering: None
- Employment Restrictions:
  - Cannot provide paid martial arts instruction to a minor.
  - Cannot work for transportation network company, such as Uber. WS §440.03 (17) (a) 1. a. and (b), and §440.445 (2) (a) 2. and 3.
  - Offender convicted of a "serious child sex offense" cannot hold a job or volunteer position that requires the offender to work or interact primarily and directly with children under 16. WS §948.13 (2) (a)
  - State law also makes offenders who committed certain offenses ineligible to receive many types of occupational licenses. For instance, Registrants are ineligible for a license to operate a child care center or to drive a school bus if they commit sexual assault, child enticement, possession of child pornography, or other specified crimes. [WS §48.65 (1), §48.685 (1) (c) and (2) (ar), and §343.12 (7) (c), Stats. and s. Trans §112.15 (1), Wis. Adm. Code.]
  - Ineligible to receive other individual occupational licenses if that offender's crime is determined to be "substantially related" to the work of the occupation, or if that offender's crime is a felony and a felony conviction makes a person ineligible for a particular license.

- Presence Restrictions:
  - Registrants must provide notice before going on school grounds; otherwise, are banned from premises. WS §301.475.
  - Those on probation, extended supervision, parole, conditional release, supervised release, or lifetime supervision areas can be banned from being present from areas children congregate, with perimeters of 100 to 250 feet. (See WS §301.48(3c))
  - Municipalities may impose anti-loitering rules beyond state laws.
- Halloween/Holiday Restrictions: No statewide but noted for having some local ordinances and/or compliance check operations specific to Halloween.
- Travel regulations: WI-SOR response letter (2019), the 10 day period also applies to visitors. No mention of any limit per month or year. However, to be safe, visitors should assume the 30 day per year limit will apply. Visiting Registrants are placed on state's website and not removed. May have to pay a fee. May be subjected to local residency restrictions.
- Civil Commitment: Yes (WS §980.01-§980.14)
- Parental Rights: Parental rights can be terminated if child was received by rape. WS §48-415
- Voting Rights: Restored upon completion of sentence, including prison, parole, and probation
- ID Card Laws: None
- Chemical Castration Law: "The parole commission may deny presumptive mandatory release to an inmate only on one or more of the following grounds…Refusal by the inmate to participate in counseling or treatment that the social service and clinical staff of the institution determines is necessary for the inmate, including pharmacological treatment using an antiandrogen or the chemical equivalent of an antiandrogen if the inmate is a serious child sex offender as defined in s. 304.06 (1q) (a). The parole commission may not deny presumptive mandatory release to an inmate because of the inmate's refusal to participate in a rehabilitation program under WS §301.047." WS §302.11(1)(b)2
- Relief from SO Legal Restrictions:
  - No provision for relief from lifetime registration if mandated by WS §301.45(5)(b) or (5m)(b). Lifetime registration based on court-ordered lifetime supervision order under WS §939.615: May petition the court for termination of supervision after 15 years. WS §939.615(6). Upon termination of supervision, the court may order relief from registration obligations. WS §301.45(5)(am)(2).
  - Certain court-ordered registration based on depiction of nudity without consent terminates upon completion of sentence/satisfaction of court order. WS §301.45(1p)(b).
  - Pardon may relieve registration requirement but no authority on point.
  - Certain youthful offenders (where offense did not involve intercourse through violence/threat of violence) may petition for relief at any time. WS §301.45(1m). Expungement of certain invasion of privacy convictions/adjudications upon completion of dispositional order relieves registration obligations. § 301.45(1p)(a). Available only to juveniles/offenders under 25. See WS §938.355 (juveniles), WS §973.015 (persons under 25) for eligibility criteria.
  - Lifetime supervision order: No criminal conviction while under supervision. WS §939.615(6)(b)(1). Court must find "that lifetime supervision is no longer necessary to protect the public," WS §939.615(6)(g), and may also order that the person is no longer required to register. WS §939.615(6)(i). Court considers mandatory evaluation of physician/psychologist. WS §939.615(6)(e).
  - Youthful offenders: Court must determine "it is not necessary, in the interest of public protection, to require the person to comply with the reporting requirements." WS §301.45(1m)(a)(3).

RULES YOU MAY FACE WHILE ON SUPERVISION

Registered citizens will face more rules, and most likely more oversight than registrants "off paper" or non-registrants "on paper." Rules vary by state or other jurisdiction (Federal has their own rules), and not every state publicly posts their rules online. In the following discussion of these types of rules, I will use

Wisconsin as an example because their rules are publicly posted online. As stated, rules can vary state-to-state; however, many supervision rules have similar restrictions to those in Wisconsin.

There are standard rules (rules that apply to all under supervision) and discretionary rules, i.e. additional rules that could be added to your terms of release by the courts or a PO.

In Wisconsin, there are 18 "standard rules of Supervision," including notification for changes of housing or employment status, the payment of court and monitoring fees, getting permission to travel; borrow money; organize an event; subject yourself to random home/drug searches, and the requirement to attend all mandatory meetings, etc. The last Wisconsin general supervision rule is to "Comply with any court ordered conditions and/or any additional rules established by your agent. The additional rules established by your agent may be modified at any time as appropriate." In other words, the PO has discretion to make up his/her own rules.

Wisconsin has the following stipulations specific to Registered Persons (copied verbatim from the WIDOC page at https://doc.wi.gov/Pages/AboutDOC/CommunityCorrections/SupervisionRules.aspx):

- "Have no contact or attempt contact with (blank space to add whoever the PO desires) nor with any prior victims of your offenses nor their family members without prior agent approval. Contact includes face-to-face contact, contacts facilitated by third parties and any other forms of communication including but not limited to telephone, computer, mail and any other electronic or scientific means.
- Fully cooperate with, participate in, and successfully complete all SO evaluations related to risk and treatment.
- Fully cooperate with, participate in, and successfully complete all SO services deemed appropriate through the SO evaluation process. Successful completion shall be identified through completion criteria determined through the sex SO standards.
- Not reside nor "stay" overnight in any place other than a pre-approved residence without prior agent approval. "Overnight" is defined as the daily period of time between the hours of _ pm and _ am unless redefined by your agent in advance.
- Permit no person to reside nor stay in your designated residence between the hours of _ pm and _ am without prior agent approval. (Times defined by agent.)
- Comply with any additional SO rules that may be established by your agent. The rules may be modified at any time as appropriate."

As the information above clearly indicates, the "agent" (either the PO or the court) has power to change or add rules to the terms of supervised release in Wisconsin.

LIFETIME GPS MONITORING

The fight against lifetime GPS monitoring has been an ongoing battle.

The 7th Circuit (upheld the lifetime GPS in *Belleau v. Wall*, 811 F.3d 929, 937 (7th Cir. 2016), declaring that the statute did not violate the Ex Post Facto Clause of the Constitution because the monitoring was considered "prevention," not "punishment." WI Attorney General Brad Schimel had broadened the class of those subjected to lifetime GPS monitoring to include not just "recidivists" (those with 2 separate convictions), but more than one count even on the same offense, thus subjecting more to lifetime GPS.

A challenge to the broader provisions also failed. The 7th Circuit reaffirmed lifetime GPS in WI in the June 2022 ruling *Braam v. Carr*, No. 20-1059 (7th Cir. 2022). Applying the 4th Amendment's

reasonableness standard, the government's interest in deterring recidivism by dangerous offenders outweighs the offenders' diminished expectation of privacy. Any differences between the 2016 plaintiff and these plaintiffs are too immaterial to make the earlier holding inapplicable.

In *State of Wisconsin v Muldrow*, 2018 WI 52 (WI Sup Ct, 5/18/18), the Wisconsin Supreme Court denied a challenge to lifetime GPS on the grounds it is a punishment and that the consequences of a guilty plea should have included a warning that lifetime GPS would be a part of the sentencing. The state upheld lower court rulings, adding, "The Applying the intent-effects test (i.e., the Martinez-Mendoza factors), we hold that neither the intent nor effect of lifetime GPS tracking is punitive. Consequently, Muldrow is not entitled to withdraw his plea because the circuit court was not required to inform him that his guilty plea would subject him to lifetime GPS tracking."

The following information was extrapolated from an online memo entitled "Mandatory Lifetime GPS Tracking of Certain Sex Offenders" signed 6/25/2019 by Lance Wiersma, director of Community Corrections. Please note this is merely a "guidance document" but it will give you an idea of the setup of the lifetime GPS program in WI.

https://doc.wi.gov/GuidanceDocumentsV2/DCC/DCC_AD13-08_Mandatory%20Lifetime%20GPS%20Tracking%20of%20Certain%20Sex%20Offenders.pdf

REFERENCE(S): Administrative Directive# 13-07, GPS Supervision Reclassification

AUTHORITY: Wis. Stats. §301.48

2005 Wisconsin Act 431 and 2007 Wisconsin Act 20 created W.S. 301.48 and requires the Department to place certain sex offenders on lifetime GPS tracking upon their release from prison (parole, extended supervision, maximum discharge); or, upon being placed on probation for a serious child sex offense (Level 1 child sex offense or Level 2 child sex offense); or, upon being granted supervised release; or being discharged from as. 971 ors. 98·0commitment.

DEFINITIONS:

- "Exclusion Zone " means a zone in which a person who is tracked using a global positioning system tracking device is prohibited from entering except for purposes of traveling through it to get to another destination.
- "GPS" means global positioning system tracking that actively monitors and identifies a person 's location and timely reports or records the person's presence in an exclusion zone or the person's departure from an inclusion zone.
- "Inclusion Zone" means a zone in which a person who is tracked using a global positioning system tracking device is prohibited from leaving.
- "Level 1 child sex offense" means a violation of s. 948.02 or 948.025 in which any of the following occurs:
  - The actor has sexual contact or sexual intercourse with an individual who is not a relative
  - of the actor and who has not attained the age of 13 years and causes great bodily harm, as defined ins. 939.22(14), to the individual.
  - The actor has sexual intercourse with an individual who is not a relative of the actor and
  - who has not attained the age of 12 years.
- "Level 2 child sex offense" means a violation of s. 948.02 or 948.025 in which any of the following occurs:
  - The actor has sexual intercourse, by use or threat of force or violence, with an individual
  - who is not a relative of the actor and who has not attained the age of 16 years.

- The actor has sexual contact, by use or threat of force or violence, with an individual who has not attained the age of 16 years and who is not a relative of the actor, and the actor is at least 18 years of age when the sexual contact occurs.

- Use of threat of force or violence is defined by an additional conviction, enhancer or read-in count or case of a violent nature that occurred at the time of the Sexual Assault.
- "Relative" means a son, daughter, brother, sister, first cousin, 2nd cousin, nephew, niece, grandchild, or great grandchild, or any other person related by blood, marriage, or adoption.
- "Serious child sex offense" means a Level 1 child sex offense or a Level 2 child sex offense.
- "Sexual Intercourse" means vulvar penetration as well as cunnilingus, fellatio, or anal intercourse between persons or any intrusion of any inanimate object into the genital or anal opening either by the defendant or upon the defendant's instruction. The emission of semen is not required.

POLICY:

The Department shall maintain lifetime tracking of a person if any of the following occurs with respect to the person on or after January 1, 2008:

1. A court places the person on probation for committing a Level 1 child sex offense [W.S. 301.48(2)(a)(1)].
2. The person is convicted for committing a Level 2 child sex offense and the court places the person on probation for committing the Level 2 child sex offense [W.S. 301.48(2)(a)(1m)].
3. The department releases the person to extended supervision or parole while the person is serving a sentence for committing a Level 1 child sex offense [W.S. 301.48(2)(a)(2)].
4. The person is convicted for committing a Level 2 child sex offense and the department releases the person to extended supervision or parole while the person is serving the sentence for committing the Level 2 child sex offense [W.S. 301.48(2)(a)(2m)].
5. The department releases the person from prison upon the completion of a sentence (i.e., Maximum Discharge) imposed for a Level 1 child sex offense [W.S. 301.48(2)(a)(3)].
6. The person is convicted for committing a Level 2 child sex offense and the department

1. releases the person from prison upon the completion of the sentence imposed for the Level 2 child sex offense [301.48(2)(a)(3m)].
7. The court places a person on lifetime supervision under W.S. 939.615 for committing a serious child sex offense and the person is released from prison [301.48(2)(a)(6)].
8. A police chief or sheriff receives a notification under 301.46(2m)(am) (i.e., Mandatory 2- strike Special Bulletin Notification) regarding the person [W.S. 301.48(2)(a)(7)].
9. The court finds a person not guilty of a serious child sex offense by reason of mental disease or mental defect and is placed on conditional release or discharged under W.S. 971.17(6).
10. The court places a person on supervised release under W.S. 980.08(6m).
11. The court discharges a person under W.S. 980.09(4).
12. The department makes a determination utilizing a risk assessment instrument that GPS is appropriate for the person [W.S. 301.48(2)(a)(2g)]. If a person who committed a serious child sex offense or a person under supervision under the interstate corrections compact for a serious child sex offense, is not subject to lifetime tracking under sub. (2), the department shall assess the person's risk using a standard risk assessment instrument to determine if global positioning system tracking is appropriate for the person.

For each person who is subject to GPS tracking under W.S. 301.48, the Department of Corrections must create individualized exclusion zones and inclusion zones for that person as is necessary to protect the public.

In creating exclusion zones, the department shall focus on areas where children congregate, with perimeters of 100 to 250 feet. More information regarding the creation of these zones is available through GPS training offered by the Monitoring Center and GPS vendor.

1. Identifying Individuals Who Require Mandatory Lifetime GPS Tracking:

For any offender placed on probation, accepted under interstate compact or released from the institution on or after January 1, 2008 with a conviction for First or Second Degree Sexual Assault of a Child (W.S. 948.02) or Repeated Acts of Sexual Assault of a Child (W.S. 948.025), the agent of record must complete a DOC-2435 GPS Tracking Screening Sheet. For probation and interstate compact cases, the agent will have 14 calendar days from the date the offender was placed on probation or accepted under the interstate compact to complete this form. For offenders being released from the institution, the agent must complete this form 30 calendar days prior to the offenders' release. Once the form is completed, the agent must email the form to the Director of Sex Offender Programs who will determine if this offender meets the statutory definition of a Level 1 and/or a Level 2 child sex offender and therefore required to be on GPS tracking.

As it relates to interstate compact cases, the Wisconsin Interstate Compact office will email GPS Specialist incoming cases for review. They will provide the name of the offender as well as the offender co.mpact number. The GPS Specialist will need to enter ICOTS and gather needed information to complete the DOC-2435. If there is not sufficient information to do an accurate screening, the GPS Specialist will notify the Wisconsin Interstate Compact office and request additional information. Once the screening is completed, the GPS Specialist will notify the Wisconsin Compact Office and the field office of the results.

2. Penalty:

Whoever intentionally tampers with a GPS tracking device or comparable technology provided under W.S. 946.465 is guilty of a Class I Felony punishable by up to 3 ½ years in prison and/or a $10,000.00 fine; however, for a repeat offender, the term of imprisonment may increase by up to 2 years with prior misdemeanor convictions, and up to 6 years with a prior felony conviction. Tamper alerts will be received at the Monitoring Center and will be addressed as outlined the GPS Monitoring Procedures.

3. Termination of Individuals Who Move Out of State:

According to W.S. 301.48(7m), if a person who is subject to GPS tracking moves out of state, the department shall terminate the person's tracking. Prior to the individual leaving the state, staff are to retrieve the GPS equipment and return the equipment to the Monitoring Center. If the person returns to the state, the department shall reinstate the person's tracking.

4. Division of Community Corrections (DCC) Field and Monitoring Center Staff Protocol for Mandatory Lifetime GPS:

- Agent to take current GPS vendor software training if they do not have access to the software that is currently being used.
- Agent to fax Enrollment Packet to the Monitoring Center (MC) at (608) 240-3360 a minimum of 5 days prior to hookup. The Enrollment Packet includes the following forms:
  - GPS Enrollment (DOC-13628)
  - Apprehension Request (DOC-58)
- For GPS and EM Enrollment, Agent to list the estimated time of hookup in the "Effective Date and Time" field. (Please do not put in an End Date)

- When the MC receives a GPS Enrollment, MC Staff will enter the current GPS Vendor web- based application and confirm that all information has been entered and is correct. This includes Client Profile, Device Assignment, Mandatory State of Wisconsin Zone, Contacts and the Apprehension Request information. If there is a discrepancy or missing information, MC Staff will notify Agent by phone or voice mail.
- MC Staff will then send an e-mail notification to the Agent informing them that the client is enrolled and they are now able to go in and enter schedules, inclusion zones and exclusion zones.
- Field Staff will enter Schedules, inclusion zones and mandatory exclusion zones.
- Prior to traveling to a site for hookup, Agent is to call the MC to confirm all information has been received and is correct for GPS. (And EM if applicable). Agent is to call the MC after the hookup, while still at the site, to see if the MC is receiving points and if the hookup is valid. For all offenders on GPS and for GPS related issues.
- Agent will contact MC Staff if the estimated hookup time has been delayed.

5. Mandatory GPS Offenders transitioning to Maximum Discharge:

- As the GPS offender approaches discharge, the agent of record will go over the DOC-2562 Maximum Discharge Lifetime GPS Requirements with offender. The agent will secure the offender's signature when possible and provide a copy to the offender. The DOC-2562 is then sent to the GPS Specialist.
- The agent of record will notify the MC that the offender is transitioning to Maximum Discharge and a service request should be made to make any changes to equipment as necessary, to ET-1 with no beacon/ no downloader.

6. Mandatory GPS Offenders Being Released on MAXIMUM DISCHARGE:

Wisconsin Statute 301.48 requires certain serious sex offenders to be placed on GPS tracking for the remainder of their life. Some of these individuals will be released from the institution on their Maximum Discharge date with no subsequent period of community supervision. According to the statutes, these individuals are still required to be placed on GPS tracking on their day of release.

The law also requires the Department to contract with a vendor for GPS tracking who will be responsible for installation and removal of the equipment. The Department is currently is under contract with Bl, Inc. Bl, Inc. is responsible for the initial installation of the GPS equipment and will address any equipment problems throughout the offender's time on GPS. The process for implementing GPS tracking on Mandatory GPS Offenders Being Released on MAXIMUM DISCHARGE ONLY is outlined below:

For Field Agents and For The Monitoring Center:

1. The agent of record will submit a DOC-1362B to the Monitoring Center.
2. The MC Staff will enroll the offender into the current GPS vendor system. The MC will enter the Mandatory State of Wisconsin Zone and any Exclusion zones provided by the GPS Specialist.
3. The MC Staff will have the agent or DCC designee coordinate with the installer of the GPS vendor to arrange the hook up to equipment.
4. The agent of record will be responsible for all arrangements to complete the initial GPS hook-up.
5. The agent of record or institution social worker will go over the DOC-2562, Maximum Discharge Lifetime GPS Requirements, with offender. The agent will secure the offender's signature when possible and provide a copy to this offender. The DOC-2562 is then sent to the GPS Specialist.
6. The agent of record (or DCC designee) will be responsible for transporting the individual from the institution to the offender's residence or the agent's office on the day of release.
7. The agent of record may meet with local law enforcement agencies where the individual is planning to reside to staff the case.

8. No inclusion zones will be created for these individuals as they are no longer on supervision and the Department has no statutory authority to restrict their movement.
9. Exclusion Zone: Upon request of a victim, exclusion zones may be imposed. The GPS Specialist shall determine if exclusion zones are appropriate based on information provided by the victim, the Victim Services Program, and/or other relevant information. The GPS Specialist shall draw the exclusion zones within the GPS electronic system. The GPS Specialist shall contact the Monitoring Center to inform them of the exclusion zone. If a Registrant enters an exclusion zone, custody is not applicable. MC staff shall contact the GPS Specialist if during working hours. If unable to contact the GPS Specialist, MC staff will contact local law enforcement and read the following policy: 'The Department of Corrections has been made aware that a MD Lifetime GPS Registrant has entered an exclusion zone where a victim may be present or is in an area that may be of concern for local law enforcement. The Department has no legal authority over this Registrant but a welfare check may be warranted on the victim or contact with the registrant may be deemed necessary by local law enforcement. The victim information is: Name, Address, Phone Number(s), Other Family/Friend Contact Information, Any questions, concerns or requests for follow-up information should be directed to the Monitoring Center at 800-978-0078." Exclusion zones may also be imposed if deemed appropriate by the GPS Specialist and approved by the Sex Offender Programs Director, i.e. school zones, parks, daycares, etc.
10. AII GPS MD Registrants shall be placed on an ET-1, no beacon/no downloader. A landline telephone is not necessary.
11. If the individual refuses to allow the GPS unit to be installed, the agent or supervisor shall contact the GPS Specialist and/or the Director of Sex Offender Programs for further instruction, to include possible referral to the District Attorney's office.

7. Maximum Discharge Offenders and Contact with Law Enforcement: Monitoring Center and GPS Specialist.

1. MC Staff will perform a welfare check on maximum discharge offenders when they receive a tamper alert, Tracker Missed Callback after 24 hours and not charging their equipment and unmonitored for 24 hours.
    a. MC staff will send Welfare Check to local Law Enforcement citing Wisconsin Statute 946.465: Whoever, without the authorization of the Department of Corrections, intentionally tampers with, or blocks, diffuses, or prevents the clear reception of, a signal transmitted by, a global positioning system tracking device or comparable technology that is provided under s. 301.48 or 301.49 is guilty of a Class I felony.
    b. Law Enforcement will Contact MC staff providing them information on if client has tampered with unit.
    c. If tamper has been detected MC staff will again cite statute 946.465; it is then law enforcement's decision whether to press charges.
    d. MC Staff will have LE take offenders transmitter if being taken into custody for tampering as evidence
    e. MC Staff will submit a service request and have installer pick up unit for Failure Analysis on equipment and to put new equipment on offender if released or being released.
    f. MC Staff will send a notification e-mail to GPS Specialist DOC GPS Mailbox and MC Supervisors of the incident.
    g. When a Failure Analysis has been completed the MC Supervisors will forward this to the GPS Specialist and the GPS specialist will submit to DA for charges.
    h. If no tamper has been seen by Law Enforcement, MC Staff will submit a service request to have the strap or unit replaced.
2. If Service was submitted and current vendor installer is with client prior to law enforcement reviewing unit.

a. MC Staff will ask installer to step outside and confirm if they see tampering with the unit.
b. If tampering is seen MC Staff will ask the installer to switch out the unit with a new one and the MC Staff will submit a Failure Analysis to have it checked.
c. Once the Failure Analysis is completed all documents will be sent to GPS Specialist for further charges to be determined. If the installer sees no sign of tampering they will continue with service on the unit.

If the person who is subject to lifetime GPS tracking completes his or her sentence, including any probation, parole or extended supervision, the department may use passive positioning system tracking. Approval to utilize passive GPS tracking in lieu of active GPS tracking must be obtained from the DCC Administrator or designee.

POLYGRAPHS

Unfortunately, polygraphs can be utilized as part of supervision, allowable under WI law:

Wis. Stat. § 301.132
Current through Acts 2021-2022, ch. 6
Section 301.132 - Honesty testing of sex offenders
(1) In this section:
(a) "Lie detector" has the meaning given in s. 111.37(1) (b).
(b) "Polygraph" has the meaning given in s. 111.37(1) (c).
(c) "Sex offender" means a person in the custody of the department who meets any of the criteria specified in s. 301.45(1g).
(2) The department may require a sex offender to submit to a lie detector test when directed to do so by the department. The department may require submission to a lie detector test under this subsection as part of a sex offender's correctional programming or care and treatment, as a condition of a sex offender's probation, parole or extended supervision, or both as part of a sex offender's correctional programming or care and treatment and as a condition of the sex offender's probation, parole or extended supervision.
(3) The department shall promulgate rules establishing a lie detector test program for sex offenders. The rules shall provide for assessment of fees upon sex offenders to partially offset the costs of the program.
Wis. Stat. § 301.132 (1995) a. 440; 1997 a. 283; 1999 a. 89.

As told to be by those who have experienced this program, extended supervision ("ES") is essentially a mandatory parole. Under WI "Truth-In-Sentencing" laws, one does X-amount of time incarcerated, then finishes the remainder of the time on ES. One long-standard SO rule imposed by the agent is the compliance with any polygraph examination. Most SOs will get them not long (within 6-8 months) after their release—the most common being the "maintenance" examination which is to determine whether you're merely following your conditions/rules. There is also a "treatment" examination which is to help determine if you're being truthful during treatment programming, especially if the facilitator sniffs that you're not being entirely transparent. This is generally not given unless necessary.

According to the website https://polygraphguy.com/wisconsin/, polygraph fees are between $500-$650 depensing on which county administers them.

To summarize polygraphs and their usage in treatment:

The polygraph does not “detect lies” but merely detects changes in heart rate, breathing, blood pressure and perspiration, and the results are interpreted by someone likely to be biased against the person taking the test. Polygraphs fail scientific scrutiny tests and are generally not admissible in court. However, polygraphs are being repackaged as tools to aid in sex offender treatment programs.

The tools are utilized as an intimidation tool to extract confessions from people in the program suspected of dishonesty. The effects of these intimidation tactics carry over into the studies performed by polygraph proponents.

Proponents of polygraph PCSOT usage rely largely on self-report studies by test subjects who were likely coerced or were willing to tell researchers what they wanted to hear to curry favor so that researchers can claim a higher number of "undetected victims" as well as overestimate the ability of polygraphs to detect deception. Other studies rely on various degrees of stat manipulation. Arguing for the use of polygraphs requires proponents to downplay the fact the test is beatable. The PCSOT relies on the belief that the polygraph is a magic device, so proponents have a vested interest in keeping the mystique of the polygraph alive. All of these myths must be propagated for the polygraph to even be remotely useful.

In reality, polygraphs lack a universal standard, have a lack of evidence showing physiological changes are solely the result of lying and not the result of other physical or mental issues; suffers from contamination bias (due to the myths about people convicted of sexual offenses); suffers from difficulty in designing an adequate test to accurately measure effectiveness; are based on proponent studies that are methodologically flawed, lack peer review, and/or is outright lying; and can be defeated with a number of tests or simply with repeated use.

The majority of legal decisions come to a consensus viewpoint. Despite the majority of studies on polygraph use suggest the polygraphs are not effective tools in sex offender treatment, courts have generally allowed states to use the polygraph as a "treatment" tool. While you generally lack the ability to refuse to take the entire polygraph test, you SHOULD have the right to plead the 5th WHEN that particular question that may lead to future criminal charges. There should be agreements written out in treatment programs and/or polygraphs that specifically state whether or not the results can be used against you in a court of law.

Following Fifth Amendment jurisprudence on the issue, a Wisconsin Supreme Court majority (6-1) in State v. Spaeth, 2012 WI 95 (July 13, 2012), ruled that Spaeth's compelled, incriminating, testimonial statements could not be used as evidence against him for criminal acts. As a general rule, you can't refuse to take the polygraph but you can refuse to answer questions ONLY IF those questions can lead to criminal charges. And since the WI Sup Ct ruled these statements can't be used in a subsequent criminal trial stemming from actions revealed during an examination, then chances are you won't be allowed to refuse to answer potentially embarrassing or incriminating questions.

"Spaeth's statement to officers is subject to derivative use immunity and may not be used in any subsequent criminal trial," wrote Justice David Prosser for the majority, which reversed the convictions because the statements should have been suppressed. The majority explained that the Fifth Amendment to the U.S. Constitution – and Art. I, Section 8 of the Wisconsin Constitution – protect individuals from self-incrimination. In general, a person must first assert the Fifth Amendment privilege to be protected by it. Thus, police must give persons in custody notice of their Miranda rights, and admissions that occur after Miranda rights are waived are generally admissible. But an exception applies when a person is compelled to testify, as Spaeth was compelled through a lie detector test.

In Kastigar v. United States, 406 U.S. 441, the U.S. Supreme Court acknowledged that the government can compel testimony but must grant a corresponding right of immunity.

The Wisconsin Supreme Court explained that the Department of Corrections has the authority to compel sex offenders to take lie detector tests. But incriminating statements can only be used "for purposes relating to correctional programming, care, and treatment of the offender." "This limitation on use of the

compelled statements is constitutionally required," wrote Justice Prosser, noting that immunity must be extended to compelled statements under Kastigar, as explained in State v. Evans, 77 Wis. 2d 225, 252 N.W.2d 664 (1977). "We see this case as one involving compelled, incriminating, testimonial evidence," Justice Prosser wrote. "As a result, Spaeth's statement to police may not be used in any criminal proceeding because the statement was not derived from a source wholly independent from the compelled testimony. It was derived from compelled testimonial evidence."

The majority rejected the state's argument that Spaeth's statements to police were "sufficiently attenuated" from the admissions to his probation agent, thus making them admissible. "The attenuation doctrine – as normally understood to include such factors as the passage of time between improper police conduct and, say, a confession – is simply inapplicable when police are following up compelled, incriminating, testimonial statements," Justice Prosser wrote. The decision does not prevent law enforcement from investigating "legitimate independent sources" not derived from a compelled statement to pursue criminal prosecution, the majority explained. Compelled statements can also be used to revoke probation or parole, it noted.

Just opinion here, but I believe polygraph examiners spread rumors on how to "beat" polygraphs so they can catch you using them, since many who employ these techniques "must be hiding something." So using many techniques just make you LOOK guilty. Other times, they just claim you failed to see if you'll admit to something you shouldn't be doing. They know polys are bullshit, but like magicians they depend on you to be wowed by the mystique of what they're doing. It is smoke and mirrors, nothing more.

CHAPTER 980 (CIVIL COMMITMENT) CASES

By attorneys Richard L. Jones, Charles L. Glynn, and Robert Peterson, assistant state public defenders
(Note: I am unsure exactly when this was written but it is pretty comprehensive so I copied it verbatim here.)

Introduction

On May 26, 1994, the Wisconsin State Legislature enacted Chapter 980 of the Wisconsin Criminal Code, entitled "Sexually Violent Person Commitments. This statute, which has been labeled the "sexual predator law," permits the State to classify persons as sexually violent and commit them indefinitely to a civil treatment facility after they have served their criminal sentences. Chapter 980 creates a civil commitment procedure for sex offenders who meet specific criteria for dangerousness as sexually violent persons. Civil commitments for sex offenders is not a new concept. Many states, including Wisconsin, at one time committed sex offenders under "sexual psychopath statutes." However, these commitments were in lieu of incarceration, and many states have since repealed such laws.

But Chapter 980 creates a unique process that does not always appear to be the best mechanism for identifying and treating sexually violent persons. For example, when Chapter 980 passed as legislation, the primary attacks on the statute were centered around whether it violated double jeopardy, ex post facto, and substantive due process laws. Its primary structure presented an unfair scenario to those referred for civil commitment, as they were convicted of sexually violent or sexually motivated offenses, sentenced to prison, required to serve their entire confinement sentence and within 90 days of completing that sentence referred for civil commitment for an undetermined period of time up to the remainder of their lives. Criminal defendants challenged the statute alleging that it violated double jeopardy, ex post facto, and substantive due process laws.

The Wisconsin Supreme Court addressed the **double jeopardy and ex post facto challenges** in State v. Carpenter, 197 Wis. 2d 252, 541 N.W.2d 105 (1995), where the Court ruled that the Chapter 980 civil

commitment procedure is primarily intended to provide treatment and protect the public, not to punish the offender and that as such the chapter does not provide "punishment" in violation of the constitutional prohibitions against double jeopardy or ex post facto laws. The Court addressed the **substantive due process challenges** in State v. Post, 197 Wis. 2d 279, 541 N.W.2d 115 (1995) ruling that the state's compelling interest in protecting the public justifies the differential treatment of the sexually violent persons subject to the chapter. The Post Court first pronounced that freedom from physical restraint is a liberty interest protected by the Due Process Clause, which requires a strict scrutiny analysis. The court then ruled that the State has a compelling interest in both protecting the community from the "dangerously mentally disordered" and in providing care and treatment to those with mental disorders. These "dual interests" have been recognized by the United States Supreme Court as legitimate; the compelling interest to protect the community under the state's police powers and the interest in providing care and treatment to those with mental disorders under the state's *parens patriae* powers. Despite the substantive due process, double jeopardy and ex post facto concerns, Wisconsin's sexual predator law appears to be a very effective method for reducing sexually violent crimes, especially for those engaged in behavioral and cognitive therapy.

Summary of the Civil Commitment Procedure Under Chapter 980

The Wisconsin Supreme Court summarized the procedure under Chapter 980, in *In re Commitment of Arends*, 2010 WI 46, 325 Wis. 2d 1, 784 N.W.2d 513, as follows:

If the State wishes to commit a [person as a] sexually violent offender, it must file a petition alleging that the person is a "sexually violent person." At trial, the State has the burden of proving, beyond a reasonable doubt, that the person: (1) has been adjudicated to have committed a sexually violent offense; (2) has a mental disorder that predisposes the person to acts of sexual violence; and (3) is more likely than not to commit another violent sexual offense. See Wis. Stat. §§ 980.01(7), 980.02(2), 980.05(3)(a). If the trier of fact so finds, the court must commit the person to the custody of the Department, which in turn must place the person into institutional care until the person is no longer a sexually violent person. Wis. Stat. § 980.06.

A committed person must be re-examined by a mental health professional "at least once each 12 months," at which time the person has the right to also be examined by an independent examiner. Wis. Stat. § 980.07(1). A committed person wishing to secure his or her release has two options. The person may file a petition for supervised release, which he or she may do no more frequently than every 12 months. Wis. Stat. § 980.08. Alternatively, a committed person may file a petition for discharge, which he or she may do at any time. Wis. Stat. § 980.09(1).

Initiation of 980 Proceedings

Department of Corrections (DOC) inmates approaching release from prison sentences being served for a 980-qualifying offense (after Act 434 this is virtually every sex-related felony) are referred to the End of Confinement Review Board (ECRB). The ECRB reviews these particular offenders to determine if they might meet the criteria for commitment as a sexually violent person. If the ECRB determines that an offender might meet the criteria for commitment as a sexually violent person, they are referred for further evaluation and action. The ERCB actually recommends 980 action on approximately one-third of those reviewed (approximately 180).

Those persons considered for further evaluation and action are referred to the DOC Evaluation Team (a group of DOC staff psychologists), which evaluate offenders to determine if they should be recommended for commitment as sexually violent persons. A DOC Staff Psychologist is assigned to evaluate each offender referred to the Team and must generate a Special Purpose Evaluation (SPE) Report which

recommends immediate discharge or commitment as a sexually violent person. If the evaluated offender does not meet the criteria for commitment as a sexually violent person, he is released according to the terms of his original sentence. If the offender meets the criteria for commitment, either the Attorney General or the District Attorney in the county of residence, county of confinement, or county of conviction for a sexually violent offense then files a 980 petition. Commitment is recommended for approximately 45 of those referred. A petition filed under section 980.02 shall state with particularity essential facts to establish probable cause to believe the person is a sexually violent person. The petition shall state the grounds on which the offense or act is alleged to be sexually motivated. If the petition filed meets the statutory requirements, a probable cause hearing must be held.

Probable Cause Hearing

Whenever a petition is filed under s. 980.02, the court shall hold a hearing to determine whether there is probable cause to believe that the person named in the petition is a sexually violent person. If the court determines after a hearing that **there is probable cause** to believe that the person named in the petition is a sexually violent person, the court shall order that the person be taken into custody if he or she is not in custody and shall order the person to be transferred within a reasonable time to an appropriate facility specified by the department for an **evaluation** by the department as to **whether the person is a sexually violent person**. If the court determines that probable cause does not exist to believe that the person is a sexually violent person, the court shall dismiss the petition.

A "**sexually violent person**" is a person who has been convicted of a sexually violent offense, has been adjudicated delinquent for a sexually violent offense, or has been found not guilty of or not responsible for a sexually violent offense by reason of insanity or mental disease, defect, or illness, and who is dangerous to others because he or she currently has a mental disorder that makes it more likely than not that the person will engage in future acts of sexual violence. "

The person subject to a 980 petition has certain rights, including the right to counsel, remain silent, present and cross-examine witnesses, have hearings recorded by a court reporter, a jury trial, to have certain materials disclosed as discovery (980.036), and to have an examiner appointed at county expense to determine if they person is indeed a sexually violent person.

Original Commitment Trial

Once probable cause is found, and if the person subject to the 980 petition denies the facts alleged in the petition, **the court** shall, upon the person's request, appoint a qualified and available licensed physician, licensed psychologist, or other mental health professional to perform an examination of the person's mental condition and participate on the person's behalf in a trial or other proceeding under this chapter at which testimony is authorized.

Upon the order of the circuit court, the county shall pay, as part of the costs of the action, the costs of the examiner. It is important to note that the **state** may also retain a licensed physician, licensed psychologist, or other mental health professional to examine the mental condition of a person who is the subject of a petition under s. 980.02 or who has been committed under s. 980.06 and to testify at trial or at any other proceeding under this chapter at which testimony is authorized.

The examination, evaluation and reports prepared by the experts form the foundation for the state's assertion that the person is a sexually violent person and the respondent's defense and argument that they are not. The matter then proceeds to trial, which may be either a court or jury trial. Any party may request that the matter be tried before a jury of 12 persons as opposed to the court.

At a trial on a petition under Chapter 980, the petitioner (state) has the burden of proving beyond a reasonable doubt that the person who is the subject of the petition is a sexually violent person.

That standard requires them to prove the following three (3) elements:

1. **The Person Has Been Convicted of a Sexually Violent Offense**. The person has been convicted of, found delinquent for, or found not guilty by reason of a mental disease or defect of a sexually violent offense, or sexually motivated offense.
2. **The Person Currently has a Mental Disorder**. "Mental disorder" is defined in 980.01(2) as a congenital or acquired condition affecting the emotional or volitional capacity that predisposes a person to engage in acts of sexual violence. "Mental Disorder" is defined in WI Jury Instruction 2502 as a condition affecting the emotional or volitional capacity that predisposes a person to engage in acts of sexual violence and causes serious difficulty in controlling behavior. Only those mental disorders that predispose a person to engage in acts of sexual violence and cause serious difficulty in controlling behavior are sufficient for purposes of commitment as a sexually violent person.
3. **The Person is Dangerous to Others Because He/She Has a Mental Disorder Which Makes It More Likely Than Not That He/She Will Engage in One or More Future Acts of Sexual Violence**. The person's mental disorder makes it likely that he or she will engage in acts of sexual violence. The person is more likely than not to commit such acts of sexual violence. "Acts of sexual violence" means conduct that constitutes the commission of a sexually violent offense. [980.01(1b)]. "Likely" means more likely than not. [980.01(1m)]. "More likely than not" as used in sub. (1m) is not an obscure or specialized term of art, but a commonly-used expression. State v. Smalley, 2007 WI App 219, 305 Wis. 2d 709, 741 N.W.2d 286 (2007). "Acts of sexual violence" means acts which would constitute "sexually violent offenses." [980.01(7)]. State v. Smalley, 2007 WI App 219, 305 Wis. 2d 709, 741 N.W.2d 286 (2007).

If the court or jury determines that the person who is the subject of a petition under s. 980.02 is a sexually violent person, the court shall enter a judgment on that finding and shall commit the person as provided under s. 980.06. If the court or jury is not satisfied beyond a reasonable doubt that the person is a sexually violent person, the court shall dismiss the petition and direct that the person be released unless he or she is under some other lawful restriction.

Commitment

Section 980.06 provides that if a court or jury determines that the person who is the subject of a petition under s. 980.02 is a sexually violent person, the court shall order the person to be committed to the custody of the department for control, care and treatment until such time as the person is no longer a sexually violent person. A commitment order under this section shall specify that the person be placed in institutional care.

Periodic Reexaminations and Annual Reviews

Once a person has been committed under 980.02, that person is entitled to annual reviews to determine if they have made sufficient progress in treatment to be considered for either discharge from that commitment or release from the institution on supervised release. The first step in this process is the periodic reexamination and preparation of the annual treatment progress report.

980.07 provides that if a person is committed under s. 980.06 and has not been discharged under s. 980.09(4), the department shall appoint an examiner to conduct a reexamination of the person's mental condition within 12 months after the date of the initial commitment order under s. 980.06 and again

thereafter at least once each 12 months to determine whether the person has made sufficient progress for the court to consider whether the person should be placed on supervised release or discharged. The examiner shall apply the criteria under s. 980.08(4)(cg) when considering if the person should be placed on supervised release and shall apply the criteria under s. 980.09(3) when considering if the person should be discharged. At the time of a reexamination under this section, the court shall appoint an examiner as provided under s. 980.031(3) upon request of the committed person or the person may retain an examiner. The county shall pay the costs of an examiner appointed by the court as provided under s. 51.20(18)(a).

At any reexamination, the treating professional shall prepare a treatment progress report. The treatment progress report shall consider all of the following: (1) The specific factors associated with the person's risk for committing another sexually violent offense; (2) Whether the person is making significant progress in treatment or has refused treatment; (3) The ongoing treatment needs of the person, and (4) Any specialized needs or conditions associated with the person that must be considered in future treatment planning. The department shall submit an annual report comprised of the reexamination report and the treatment progress report to the court that committed the person under s. 980.06, the person committed under s. 980.06, the department of justice, and the district attorney, and a copy of the annual report shall be placed in the person's treatment records.

Petitions for Discharge and Supervised Release

If the annual review and treatment progress report favor and/or recommend discharge, supervised release, or both, the committed person will file either a Petition for Discharge or a Petition for Supervised Release. Either way, the committed person will seek the appointment of an examiner to prepare a report that they hope will recommend discharge, supervised release, or both.

The right to petition for discharge or supervised release is "among the protections that the Supreme Court has considered significant in concluding that [Chapter 980] does not violate the equal protection clause or the right to due process." *State v. Combs,* 2006 WI App 137 ¶28, 295 Wis. 2d 457, 720 N.W.2d 684 (citing *State v. Post*, 197 Wis. 2d 279, 307 n. 14, 313-16, 325-327, 541 N.W.2d 115 (1995). As noted by the United States and Wisconsin Supreme Courts, "[c]ivil commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection." *State v. Post*, 197 Wis. 2d 279, 302, 541 N.W.2d 115, 122 (1995). Since its enactment, chapter 980 has been construed as offering "ample and fair opportunity for review and petition for release." Id.

The right to periodic reexaminations and the ability to petition for discharge and/or supervised release are among the protections that the Wisconsin Supreme Court has considered significant in concluding that chapter 980 does not violate the equal protection clause or the right to due process. *In re the Commitment of Combs,* 2006 WI App 137 ¶28, 298 Wis. 2d 457, 476, 720 N.W.2d 684, 693 (2006) (citing *State v. Post*, 197 Wis. 2d 279, 307 n. 14, 313-16, 325-327, 541 N.W.2d 115 (1995)). Although the state is not required to provide unlimited opportunities for review, it must allow for review when adequate cause is shown. See *State v. Post*, 197 Wis. 2d 279, 327, 541 N.W.2d 115 (1995). Thus, whenever the committed person has reason to believe that he/she no longer meets the criteria for commitment as a sexually violent person, they may petition the court for discharge.

The Discharge Process

The discharge process is outlined in Wis. Stat. §980.09. The court, pursuant to §980.02 and §980.09(2), is required to conduct a two-step review process to determine whether the committed person is entitled to a trial. Wis. Stat. §980.09(1) provides that "a committed person may petition the committing court for discharge at any time. **The court shall deny the petition under this section without a hearing unless the petition alleges facts from which the court or jury would likely conclude the person's condition**

has changed since the most recent order denying a petition for discharge after a hearing on the merits, or since the date of his or her initial commitment order if the person has never received a hearing on the merits of a discharge petition, so that the person no longer meets the criteria for commitment as a sexually violent person." Wis. Stat. §980.09(2) provides that "…if the court determines that the record does not contain facts from which a court or jury would likely conclude that the person no longer meets the criteria for commitment, the court shall deny the petition [but] **if the court determines that the record contains facts from which a court or jury would likely conclude the person no longer meets the criteria for commitment, the court shall set the matter for trial**."

The Wisconsin Supreme Court clarified the discharge procedure outlined in Wis. Stat. §980.09(1) and (2) in *In re Commitment of Arends*, 2010 WI 46, 325 Wis. 2d 1, 784 N.W.2d 513. According to the court in *Arends*, **the first step**, pursuant to §980.09(1), is a "paper review of the petition and its attachments only." *Arends* at ¶25. The court noted that "[t]he clear purpose of such a review is to weed out meritless and unsupported petitions." *Id.* The court explains "[t]his standard is similar to that used in civil cases to decide a motion to dismiss for failure to state a claim upon which relief can be granted under Wis. Stat. §802.06(2)(a)(6) (2005-2006)." *Id.* **The second step** is a more expansive review that takes into account the total record to "determine whether the documents and arguments before the court contain 'facts from which the court or jury may conclude that the person does not meet the criteria for commitment.'" *Arends* at ¶37. One of the primary purposes of the review process is to weed out meritless petitions and/or petitions that seek to simply litigate what has previously been litigated. See *State v. Arends*, 2010 WI 46, 325 Wis. 2d 1, 22, 784 N.W.2d 515.

The Legal Standard for Discharge/Supervised Release

To remain committed as a sexually violent person, the person must be "dangerous to others because the person's mental disorder makes it likely that he or she will engage in acts of sexual violence." Wis. Stat. §980.02(2)(c). In chapter 980, "mental disorder" is defined in §980.01(2) as "a congenital or acquired condition affecting the emotional or volitional capacity that predisposes a person to engage in acts of sexual violence."

"Likely," in this context, is defined in §980.01(1m), Wis. Stats., as "more likely than not." See also *State v. Smalley*, 2007 WI App 219, 305 Wis. 2d 709, 741 N.W.2d 709, 741 N.W.2d 286 which articulates that the term "'more likely than not' is not an obscure or specialized term of art, but a commonly-used expression." The *Smalley* court went on to clarify that "it is hard to think of a clearer definition of the term than the term itself; although perhaps its expression to 'more likely to happen than not to happen' is more explicit." *Id*.

The requirement of the person petitioning for discharge is to show that they are no longer a sexually violent person. The court in *State v. Combs,* 2006 WI App 137, 295 Wis. 2d 457, 720 N.W.2d 684 (citing *State v. Pocan*, 2003 WI App 233 ¶8, 267 Wis. 2d 953, 671 N.W.2d 860), indicated that, though it is not the only way, progress in treatment is one way to show that a person is no longer a sexually violent person. The *Combs* court further articulated that the determination that a person is no longer sexually violent "may [also] be established by a method professionals use to evaluate whether a person is sexually violent that was not available at the time of the prior examination, as well as by a change in the person himself or herself." *Combs* at ¶25.

Petitions for Supervised Release

Any person who is committed under s. 980.06 may petition the committing court to modify its order by authorizing supervised release if at least 12 months have elapsed since the initial commitment order was entered or at least 12 months have elapsed since the most recent release petition was denied, since

supervised release was denied under s. 980.09(4), or since the most recent order for supervised release was revoked. The director of the facility at which the person is placed may file a petition under this subsection on the person's behalf at any time.

The person submitting the petition may use experts or professional persons to support his or her petition. The district attorney or the department of justice may use experts or professional persons to support or oppose any petition.

The court, without a jury, shall hear the petition within 120 days after the report of the court-appointed examiner appointed is filed with the court, unless the court for good cause extends this time limit.

In making a decision, the court may consider, without limitation because of enumeration, the nature and circumstances of the behavior that was the basis of the allegation in the petition, the person's mental history and present mental condition, where the person will live, how the person will support himself or herself, and what arrangements are available to ensure that the person has access to and will participate in necessary treatment, including pharmacological treatment using an antiandrogen or the chemical equivalent of an antiandrogen if the person is a serious child sex offender. A decision on a petition filed by a person who is a serious child sex offender may not be made based on the fact that the person is a proper subject for pharmacological treatment using an antiandrogen or the chemical equivalent of an antiandrogen or on the fact that the person is willing to participate in pharmacological treatment using an antiandrogen or the chemical equivalent of an antiandrogen.

The court may not authorize supervised release unless, based on all of the reports, trial records, and evidence presented, the court finds that all of the following criteria are met:

1. The person is making significant progress in treatment and the person's progress can be sustained while on supervised release
2. It is substantially probable that the person will not engage in an act of sexual violence while on supervised release.
3. Treatment that meets the person's needs and a qualified provider of the treatment are reasonably available.
4. The person can be reasonably expected to comply with his or her treatment requirements and with all of his or her conditions or rules of supervised release that are imposed by the court or by the department.
5. A reasonable level of resources can provide for the level of residential placement, supervision, and ongoing treatment needs that are required for the safe management of the person while on supervised release.

The person has the burden of proving by clear and convincing evidence that the person meets the criteria outlined above.

If the court finds that all of the criteria are met, the court shall select a county to prepare a report. Unless the court has good cause to select another county, the court shall select the person's county of residence as determined by the department under s. 980.105.

The court shall order the county department under s. 51.42 in the county of intended placement to prepare a report, either independently or with the department of health services, identifying prospective residential options for community placement.

The court shall review the plan submitted by the department under par. (cm). If the details of the plan adequately meet the treatment needs of the individual and the safety needs of the community, then the

court shall approve the plan and determine that supervised release is appropriate. If the details of the plan do not adequately meet the treatment needs of the individual or the safety needs of the community, then the court shall determine that supervised release is not appropriate or direct the preparation of another supervised release plan to be considered by the court under this paragraph.

An order for supervised release places the person in the custody and control of the department. The department shall arrange for control, care and treatment of the person in the least restrictive manner consistent with the requirements of the person and in accordance with the plan for supervised release approved by the court. A person on supervised release is subject to the conditions set by the court and to the rules of the department.

As a condition of supervised release granted under this chapter, for the first year of supervised release, the court shall restrict the person on supervised release to the person's residence except for outings approved by the department of health services that are under the direct supervision of a department of corrections escort and that are for employment or volunteer purposes, religious purposes, educational purposes, treatment and exercise purposes, supervision purposes, or residence maintenance, or for caring for the person's basic living needs.

If the department believes that a person on supervised release, or awaiting placement on supervised release, has violated, or threatened to violate, any condition or rule of supervised release, the department may petition for revocation of the order granting supervised release as or may detain the person. If the department believes that a person on supervised release, or awaiting placement on supervised release, is a threat to the safety of others, the department shall detain the person and petition for revocation of the order granting supervised release. If the department concludes that the order granting supervised release should be revoked, it shall file with the committing court a statement alleging the violation and or threat of a violation and a petition to revoke the order for supervised release. The court shall hear the petition within 30 days, unless the hearing or time deadline is waived by the detained person. A final decision on the petition to revoke the order for supervised release shall be made within 90 days of the filing. Pending the revocation hearing, the department may detain the person in the county jail or return him or her to institutional care. If the court finds after a hearing, by clear and convincing evidence, that any rule or condition of release has been violated and the court finds that the violation of the rule or condition merits the revocation of the order granting supervised release, the court may revoke the order for supervised release and order that the person be placed in institutional care. The court may consider alternatives to revocation. The person shall remain in institutional care until the person is discharged from the commitment under s. 980.09 or is placed again on supervised release. If the court finds after a hearing, by clear and convincing evidence, that the safety of others requires that supervised release be revoked the court shall revoke the order for supervised release and order that the person be placed in institutional care. The person shall remain in institutional care until the person is discharged from the commitment under s. 980.09 or is placed on supervised release.

Petitions for Discharge

A committed person may petition the committing court for discharge at any time. The court shall deny the petition under this section without a hearing unless the petition alleges facts from which the court or jury would likely conclude the person's condition has changed since the most recent order denying a petition for discharge after a hearing on the merits, or since the date of his or her initial commitment order if the person has never received a hearing on the merits of a discharge petition, so that the person no longer meets the criteria for commitment as a sexually violent person.

If a person files a petition for discharge, the person may use experts or professional persons to support his or her petition. The district attorney or the department of justice may use experts or professional persons to support or oppose any petition.

In reviewing the petition, the court may hold a hearing to determine if the person's condition has sufficiently changed such that a court or jury would likely conclude the person no longer meets the criteria for commitment as a sexually violent person. In determining under this subsection whether the person's condition has sufficiently changed such that a court or jury would likely conclude that the person no longer meets the criteria for commitment, the court may consider the record, including evidence introduced at the initial commitment trial or the most recent trial on a petition for discharge, any current or past reports filed under s. 980.07, relevant facts in the petition and in the state's written response, arguments of counsel, and any supporting documentation provided by the person or the state. If the court determines that the record does not contain facts from which a court or jury would likely conclude that the person no longer meets the criteria for commitment, the court shall deny the petition. If the court determines that the record contains facts from which a court or jury would likely conclude the person no longer meets the criteria for commitment, the court shall set the matter for trial.

At trial, the state has the burden of proving by clear and convincing evidence that the person meets the criteria for commitment as a sexually violent person. If the court or jury is satisfied that the state has not met its burden of proof, the person shall be discharged from the custody of the department. If the court or jury is satisfied that the state has met its burden of proof, the court shall proceed to determine whether to modify the person's existing commitment order by authorizing supervised release, unless the person waives consideration of the criteria. If the person waives consideration of these criteria, the waiver is a denial of supervised release.

Procedures for Discharge Hearings

The district attorney or the department of justice, whichever filed the original petition, or the person who filed the petition for discharge or his or her attorney may request that a trial under s. 980.09(3) be to a jury of 6. A jury trial is deemed waived unless it is demanded within 10 days of the determination by the court that a court or jury would likely conclude under s. 980.09(1) that the person's condition has sufficiently changed. No verdict shall be valid or received unless at least 5 of the jurors agree to it.

*****

DISCLAIMERS: This informational packet was compiled by Derek W. Logue of OnceFallen.com for the purpose of answering the most common Wisconsin-specific questions. However, each segment came from various resources, and each individual resource should be contacted directly before using the copyrighted segments of this packet for any purpose that violates Fair Use policy, such as commercial reproduction (i.e., you're reselling this guide). This information is deemed accurate as of December 2021 but the laws can change rapidly and with little or no warning, so this guide should not take the place of paid legal advice.

For research on the laws of other states or a general guide on surviving the registry, I suggest ordering a copy of "Your Life on The List: Edition 3" by Derek W. Logue (digital copy available for free from oncefallen.com and physical copies can be bought on Amazon.com for $14.95). If you are considering becoming an activist and fighting post-release registry laws, you should order a copy of "The Anti-Registry Activist Manual: A Guide to Effective Advocacy" by Jonathan Grund ($13.50 at Amazon).